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Applicant Information and Project Summary Form

1. Name of Applicant(s) **Clark Fork Coalition, Milltown Redevelopment Working Group**
2. Project Title **Milltown Land Acquisition Project Development Grant**
3. Type of Entity* **Non-profit corporation, Stakeholder Group**
(city, corporation, private individual, association, etc.)

(***Corporation** and **Foundation** applicants are required to submit corporation information as follows: Articles of Incorporation, and Certificate of Good Standing. **Partnership** applicants are required to submit a Partnership Agreement and a list of the names of the Partners. **Limited Liability Company** applicants are required to submit Articles of Organization, a list of the members/managers, and Certificate of Good Standing. **Associations** are required to submit a list of members, Articles of Incorporation and Certificate of Organization. **Please attach these documents to this form.**)

4. Description of Project Location (Attach map showing location.) **Lands in and adjacent to the present Milltown Reservoir (see attached map)**

5. Injured Natural Resource(s) and/or Impaired Services to be Restored, Rehabilitated, Replaced or Equivalent Acquired through Project **public river-based recreation (hffishing access, hunting, wildlife viewing), wetland habitat, aquatic habitat**

6. Authorized Representative: **Matt Clifford Conservation Director/ Staff Attorney**
(Name) (Title)
Mailing Address: **P.O. Box 7593**
(Street/PO Box)
Missoula, MT 59807 **542-0539**
(City/State/Zip) (Telephone)
Contact Person*: **Same as above**
(Name) (Title)
Mailing Address*: _____
(Street/PO Box)

(City/State/Zip) (Telephone)
Phone _____

E-mail Address:

matt@clarkfork.org

7. Proposed Funding Sources

Funding Source		Amount in (\$) Dollars					Matching Fund Percentage (Funding Source Total/Project Total)
		Committed Funds			Uncommitted Funds	Total	
		Grants	Non-Grant Funds				
			Cash	In-kind			
A.	UCFRB Restoration Fund	\$ 25,000.00				\$ 25,000.00	88.92%
B.	Clark Fork Coalition			\$ 3,115.00		\$ 3,115.00	11.08%
C.							
D.							
E.							
F.							
G.							
H.							
I.							
Non-NRDP Totals		\$ 25,000.00		\$ 3,115.00		\$ 3,115.00	11.08%

8. Estimated Total Project Cost

\$28,115.00

(Automatically Calculated from spreadsheet above)

9. Private (non-Governmental) Grant Applicant Financial Information

- Are there any lawsuits, judgments, or obligations pending for or against you? No
- Have you ever declared bankruptcy? No
- Are any of your tax returns delinquent or under dispute? No
- Any unpaid deficiencies? No
- Are you a party to a lawsuit? Yes
- Do you have any other contingent liabilities? No
- Do your current and deferred liabilities exceed the value of your assets? No

Explanation for Question 9(e)

The Clark Fork Coalition is a plaintiff in a Montana state court challenge to the validity of a point-source discharge permit issued by the Montana Department of Environmental Quality to Revett Minerals, Inc. The case is awaiting a summary judgment ruling from state district court

in Helena. The case does not involve any claims for money damages against the Clark Fork Coalition or other plaintiffs.

Certification for Individuals or Private Entities

Individuals or private entities requesting grant funds must sign the following certification.

Certification for Individuals or Private Entities

I, the undersigned, have provided this financial information as part of my (our) application for a grant from the UCFRB Restoration Fund. I (We) certify that the statement is complete and accurate to the best of my (our) knowledge and I (we) authorize the State of Montana to investigate my credit worthiness and any of the matters described above.

Social Security Numbers will be kept confidential.

Private Entities:

Clark Fork Coalition

Tracy Stone-Manning 36-3428665

Name of Authorizing Agent

Federal Tax ID No.

Signature

Date

11. Authorizing Statement

An authorized agent/agents representing the applicant must by his/her signature indicate that the application for funds and expenditure of matching funds, as represented, is officially authorized.

Grant Authorization

I hereby declare that the information included in and all attachments to this application are true, complete, and accurate to the best of my knowledge, and that the proposed project complies with all applicable state, local, and federal laws and regulations.

I further declare that, for the Clark Fork Coalition, I am legally authorized to enter into a binding contract with the State of Montana to obtain funding if this application is approved. I understand that the Governor must authorize funding for this project.

Clark Fork Coalition
Project Sponsor

Date

Authorized Representative (signature)

Executive Director
Title

Project Abstract

Background

Over the next several years, the state and federal governments will oversee the cleanup and restoration of the Milltown Reservoir area, which is contaminated with mine wastes. Milltown Dam will be permanently removed, restoring the confluence of the Clark Fork and Blackfoot Rivers and exposing several hundred acres of land that are presently submerged. These lands, plus some additional adjacent acreage and an associated water right, are owned by NorthWestern Corporation, which owns Milltown Dam.

Residents of the Bonner-Milltown-Missoula area have expressed a strong desire that the restored lands come into public ownership and made available for public use. The plan formulated by the Milltown Redevelopment Working Group – a stakeholder group which was formed to develop a shared vision of the Clark Fork-Blackfoot confluence area and surrounding community, calls for public ownership. The state of Montana, recognizing the desirability of public ownership, included certain provisions in the Milltown consent decree requiring NorthWestern to sell sufficient lands and water rights to pay off \$1.4 million that it owes to the state, and giving the state a right of first refusal on any such sale.

Project Details and Benefits

The proposed project development grant would enable the applicants, working closely with the NRDP staff, to negotiate the terms of a deal with NorthWestern, in which the state would purchase most or all of NorthWestern's lands in the Clark Fork-Blackfoot confluence area, as well as the company's water right, and place them under the management of the Department of Fish, Wildlife and Parks. Grant funds would be used to hire a real estate broker to do the necessary title research on the Northwestern parcels, help formulate the terms of an offer to NorthWestern, facilitate negotiations with NorthWestern, and coordinate the necessary appraisal and legal work. Funds would also be used to pay for the appraisal.

The final deliverable product from this project development grant would be a signed buy-sell agreement with NorthWestern, which would be contingent on the state committing funds to purchase the land. If this project is successful, the applicants plan to submit a subsequent application to the NRD program for funds to complete the sale.

Public ownership of the Clark Fork-Milltown confluence would directly benefit both restoration of injured natural resources and the related services. The public has expressed great interest in using the confluence area as a focal point for river-based recreation such as boating, fishing, and wildlife viewing. In addition, public ownership of the land will maximize the options available to the state to design, implement, and maintain comprehensive restoration measures for the benefit of the public. Public ownership of the water right will prevent a private party from converting it to a consumptive use and depleting streamflow. Finally, public ownership would prevent these lands from being acquired by a private party who could eliminate public access to this area, which is of vital interest to the community.

Technical Narrative

A. Project Need/ Problem to be Solved

Over the next several years, the U.S. Environmental Protection Agency (EPA) and the Montana Department of Environmental Quality will oversee the cleanup and restoration of the Milltown Reservoir area, which is contaminated with several million cubic yards of mine wastes. Milltown Dam will be permanently removed. The state Natural Resource Damage (NRD) program will restore the Clark Fork and Blackfoot rivers to naturally-functioning channels with adjacent wetlands.

The removal of Milltown Dam will expose several hundred acres of land that are now submerged beneath the reservoir. These lands, plus some additional adjacent acreage, are owned by NorthWestern Corporation, the owner of Milltown Dam.

Residents of the Bonner-Milltown-Missoula area have expressed a strong desire that the restored lands come into public ownership and made available for public use. The plan formulated by the Milltown Redevelopment Working Group – a stakeholder group which was formed to develop a shared vision of the Clark Fork-Blackfoot confluence area and surrounding community, calls for public ownership. Local residents have expressed a strong interest in using the restored confluence area as a focus of river-based recreation such as kayaking, canoeing, rafting, fishing, hunting, and birdwatching.

When the state negotiated the consent decree governing remediation and restoration of the Milltown site, it recognized the potential desirability of public ownership. For this reason, the state included certain provisions in the consent decree requiring NorthWestern to sell sufficient lands to pay off \$1.4 million that it owes to the state, and giving the state the option to acquire the lands and water rights through a right of first refusal on any such sale. However, the consent decree did not commit any state funds to exercising this right of first refusal. Because the state's current restoration plan relies on the payment of the additional \$1.4 million from NorthWestern to complete needed restoration measures, the state cannot merely forgive NorthWestern's debt as a means of paying for the Milltown property; rather, additional funds will be necessary to complete the sale. This two-phase project is intended to negotiate the purchase of NorthWestern's Milltown property and secure funds to complete the sale.

B. Project Goals and Objectives

This project is the first phase of a two-phase process to acquire most or all of NorthWestern's Milltown lands and water rights, and place them in the ownership of the Montana Department of Fish, Wildlife and Parks (FWP). The specific goal of this first phase is to negotiate a signed option agreement with NorthWestern giving the state the

right to purchase those lands and rights. If this first phase is successful, the applicants intend to submit a second grant application for funds to complete the sale.

Existing Condition The location of NorthWestern's Milltown-area lands is shown on the attached aerial photo (Fig. A) and certificate of survey map (Fig. B). The vast majority of these lands are included in Tract 1, which extends up the Clark Fork arm of the reservoir from just below the dam to a point about 2 1/2 miles upstream. This tract includes the river confluence area, as well as most of the area where the restored Clark Fork River channel and riparian wetlands will initially be located. Parcel 1 also includes some land on the high bluff overlooking the dam, just west of the lower reservoir. The remaining three parcels, Tracts 2-4, are located on the Blackfoot arm of the reservoir. Each of these three tracts is separated from its neighbors by the rights of way for I-90, the MRL railroad, and State Highway 200.

Preliminary research indicates there may be disputes with the owners of various adjoining tracts over the precise boundaries of Parcels 1-4. Potential disputes arise from the legal descriptions in various deeds, which reference the edge of reservoir or the river as boundary lines.

In their present condition, the vast majority of the Northwestern lands are not suitable for private development because they are either submerged for all or part of the year, or are within the 100-year floodplain. Exceptions to this are the area on the bluff overlooking the dam, and the area just north of the dam.

Northwestern currently allows recreational access to the reservoir and adjacent lands, which receive some use for waterfowl hunting, bird watching, and a limited amount of fishing for non-native northern pike. In addition, a public boat launch area is located on the Clark Fork just downstream of the dam, which receives a moderate amount of use as a put-in by canoeists and rafters floating downstream to Missoula.

The state's restoration plan for the Milltown area emphasizes the creation of naturally-functioning river channels compatible with fish and wildlife habitat and public recreation. Currently, most reaches of the major rivers close to the Missoula urban area (Clark Fork, Blackfoot, and Bitterroot) receive heavy use from floaters and fishermen. The lack of suitable takeout areas on the reservoir forces floaters to take out at Turah Bridge on the Clark Fork and Marco Flat on the Blackfoot, each of which is several miles above the confluence.

After the state implements its restoration plan, a good portion of the Northwestern parcels will be outside the 100-year floodplain, and legally suitable for residential or commercial development. Moreover, once the dam is decommissioned and removed, NorthWestern and its successors will be under no obligation to provide public access for boating or other recreation. Based on recent trends in similar riverfront parcels both upstream and downstream of the Milltown area, it is likely the Northwestern lands will come under considerable pressure for private residential development that will not be conducive to either wildlife habitat or public access.

NorthWestern also owns a water right for over 1,000 cubic feet per second (cfs) of in-stream flow for hydropower generation at the dam site, with a priority date of 1907. The vast majority of this water right is essentially unmarketable, because it is a nonconsumptive right, and to convert it to a consumptive use, a buyer would have to demonstrate there would be no adverse effect to hundreds of senior water rights holders, each of which would have the right to object to the change. However, there may be a small portion of the Milltown right that is consumptive – an amount equal to any net evaporation loss caused by the reservoir pool. Although it might be very difficult to quantify and market this right, it may not be impossible, and any such marketing could reduce the amount of historical instream flow in the Clark Fork at Milltown. The prospect of this loss may be sufficient to warrant paying NorthWestern some value to acquire the right and convert its use to fisheries purposes.

Desired Future Condition The Milltown Redevelopment Working Group has developed a conceptual plan for what the Clark Fork-Blackfoot confluence area should look like after restoration. This plan, which was developed over the course of 18 months with extensive input from 22 diverse stakeholders and the public, represents a piece of a larger conceptual plan for the redevelopment of the entire Bonner-Milltown area that the Working Group developed at the request of the Missoula County Commission. A map depicting the conceptual plan for the river confluence area is included as Attachment 3.

The Working Group's conceptual plan calls for creating a public park in the present reservoir area, including the following key elements:

- NorthWestern Energy-owned lands should be transferred to public ownership. The lands should be designated as either a State or County park.
- The site should be free and open to public access
- The majority of the area should be preserved in a natural setting that protects wildlife habitat
- Focus more intensive use and development near interpretive center on west end of park.
- A trust fund should be established to provide long-term maintenance for facilities.

The conceptual plan also includes detailed goals for various classes of recreation. Once Milltown Dam and its reservoir are no longer an obstacle to floating, and the state has established natural river channels, wetlands, and riparian areas, the restored confluence area will naturally become be a focal point for river-based recreation. The conceptual plan calls for non-motorized boating access both above and below the river confluence, walk-in fishing, hunting, and birdwatching opportunities, and a system of non-motorized trails connected to the surrounding communities of Missoula and Bonner/ Milltown.

Securing public ownership of the Milltown lands is a prerequisite for establishing the above recreational elements. Ownership by FWP will enable that agency, which owns

and manages a system of parks and river access sites across the state, to establish the necessary trails and other infrastructure free of ownership concerns, and will ensure public access as well.

Public ownership will also have direct benefits for restoration of natural resources. State ownership will allow the NRD program maximum flexibility to design and implement restoration elements such as river channels, wetlands, native vegetation, and landscape features without having to obtain the permission of private landowners. This will enable more complete and comprehensive restoration of these resources. In addition, acquiring the water right would benefit instream flows for fisheries by eliminating any possibility of the consumptive portion or the existing right being converted to use at some point upstream.

C. Project Implementation Plan

The final deliverable product for this project development grant will be a signed option agreement between NorthWestern and the state of Montana, giving the state the right to purchase all or some of Parcels 1-4 for an agreed-upon price. We propose hiring Bruce Bugbee of American Public Land Exchange, a real estate professional with extensive experience in conservation land transactions that benefit the public and conservation values, to facilitate all negotiations with NorthWestern, and to provide or help secure any necessary title work, legal services, boundary adjustments, and other related services that may be necessary. The Clark Fork Coalition, which has excellent working relationships with NorthWestern, the NRD program, FWP, Missoula County, the Milltown Redevelopment Working Group, adjacent landowners, and the interested public, proposes to be closely involved in the negotiations in order to facilitate discussions and ensure that whatever terms are finally arrived at are likely to be acceptable to affected parties and have broad public support.

The specific steps we propose to take to arrive at a final deal with NorthWestern are as follows.

Step 1: Determine Lands to be Included in Sale. In order to maximize the ratio of restoration benefits to project cost, we plan to explore the alternative of carving off one or more portions of non-floodplain land with lower restoration potential, which NorthWestern could pursue selling for private development. The most likely such portions would lie on portion of Parcel 1 atop of the bluff to the south of the reservoir. This land is somewhat disconnected from the rest of Parcel 1 by the bluff, is of less interest to restoration because of the lack of riparian values, and has potentially high value as one or more home sites.

Task: Conduct discussions among CFC, NorthWestern, and the state regarding what lands it may be appropriate for NorthWestern to retain for sale to private parties. (32 hours contracted real estate specialist)

Task: Secure any necessary subdivision and/or common boundary adjustment and

related survey work. August - October 2006

Step 2: Title and Legal Description Review/ Due Diligence. As with any real estate acquisition, it will be necessary to examine the title for each parcel and note any potential problems or conflicts. Based on what we know already, there are boundary disputes with two neighboring owners to the south and west of Parcel 1 (Crystal Creek Ranch and Pinky Harris), and potential disputes with several neighbors to Parcels 2-4. All of these disputes arise from different alleged interpretations of the property descriptions in the various deeds, which make reference to either the river or the reservoir level, both of which have changed in the past or will change with dam removal.

Task: Review title and legal description to determine accuracy and to point out concerns. August 2006 (96 hours contracted real estate specialist)

Step 3: Obtain an Appraisal. We will need to obtain an appraisal that meets the requirements of the NRD program and NorthWestern, from a qualified appraiser acceptable to both. Experience has shown that agreeing upon appraisal standards and assumptions can be a time-consuming process.

Task: Select appraiser and establish mutually-acceptable guidelines and assumptions for the appraisal. (36 hours contracted real estate specialist)

Task: Review appraisal and work out issues (36 hours contracted real estate specialist)

Step 4: Negotiate Option Agreement. Working closely with the state, negotiate the terms and conditions of the final option giving the state the right to purchase the specified lands.

Task: Review draft agreements, make redline changes, facilitate negotiations with Northwestern (32 hours contracted real estate specialist)

The following table (page 12a) provides a specific breakdown of the expected contract services and staff time for the various identified tasks.

D. Project Time Schedule

Let contract for real estate broker	July 2006
Determine lands to be included in sale	July-August 2006
Obtain subdivision approval (if one or more tracts are excluded from sale)	November 2006
Title review/ due diligence	July – October 2006
Select appraiser/ agree on standards & assumptions	October 2006
Review appraisal/ resolve issues	December 2006
Negotiate final option agreement	February 2007

E. Methods and Technical Feasibility

The specific methods to be used (title research, appraisal, negotiations, boundary adjustment) are standard in real estate transactions, and have been used successfully in numerous public acquisitions for conservation purposes. Examples within the NRD program include the Watershed, Stuart Mill Bay, Big Butte, and Duhamel land acquisitions.

The project does involve some uncertainties that are within the normal range for a transaction of this size involving riparian lands. These include the precise lands to be transferred, the amount that the sales price should be discounted to reflect boundary disputes, the exact quantity and value of any marketable consumptive water right, and the presence of any unforeseen defects in the title to the parcels. The process and methods outlined in this application should be adequate to assess, and hopefully resolve, all of these uncertainties.

F. Monitoring Plan

Not applicable.

G. Project Team

Bruce Bugbee

American Public Land Exchange, President, 5/82 to present.

Bruce A. Bugbee & Associates - Owner, 2/76 to present.

Bruce A. Bugbee, Broker - Owner, 10/92 to present.

American Conservation Real Estate Company, Inc. (ACRE), President, 1/91 to 10/93.
Regional Planning Association of Western Montana (RPAWM), Project Director, 11/71-3/74.

Education:

University of Montana, Missoula, Bachelor of Arts in Liberal Arts, 8/74.

University of Montana, Missoula, completed course requirements for Masters of Science in Environmental Studies: Land Use Planning, 3/76.

Professional Organizations:

Montana Association of Planners

American Planning Association

International Right-of-Way Association

Soil Conservation Society of America

Land Trust Alliance

Affiliations:

The Conservation Fund, Senior Associate, 1987 to present

Montana Natural History Center, Advisor, 1997 to present

Association for Conflict Resolution, Member, 1999 to present

Awards:

1988 Recipient Don Aldrich Fish, Wildlife and Conservation Award

2002 APLE Company, recipient of Wildlife Conservation Award, from Montana Chapter of The Wildlife Society

Licenses: Licensed broker in Montana, Idaho and Wyoming.

Mark Sommer

APLE , Associate and Geographic Information Administrator, Missoula, Montana, 8/98 to present.

Moab/Monticello Ranger District, Minerals and Lands Administrator, Manti-La Sal National Forest, Monticello, Utah 6/96-3/98

Red River Ranger District, Minerals and Lands Program Administrator, Nez Perce National Forest, Elk City, Idaho 10/91-6/96

Nez Perce National Forest, Soil Scientist, Grangeville, Idaho 5/90-10/91

Education:

University of Idaho, Master's Degree in Forest Soils, May 1991

University of Wisconsin Stevens Point, Bachelor's Degree in Soils, December 1988

Colorado State Univ., Valuation and Landownership Adjustment course from 1996

Awards and honors:

USFS Northern Region Locatable Minerals Program Achievement Award

District Minerals and Lands Program Achievement Award, USFS, 1993

Outstanding Graduate Student in Forest Resources, University of Idaho, 1991

Outstanding Undergraduate Student in Soil Science, University of Wisconsin, Stevens Point, 1988

Licenses: Licensed real estate agent, Montana.

Matt Clifford

Matt holds a B.A. in Journalism and Spanish from Northern Arizona University and a J.D. from the University of Montana School of Law. His thorough understanding of

state, local, and federal environmental laws comes from his extensive experience in working with and creating such laws. He has been involved as counsel in some of the most significant recent environmental cases in Montana, including the landmark MEIC v. DEQ case that first gave meaning to the fundamental right to a clean and healthful environment under the Montana Constitution. He serves on the Tri-State Water Quality Council, where he helped develop Montana's cutting-edge numerical standards for nutrient pollution in the Clark Fork, among the first of its kind in the nation. He played a key role in streamlining the process of approving the removal of Milltown Dam, and was appointed by two successive governors to serve on the Montana Natural Resource Damage citizen's advisory council, which advises the governor on how to spend over \$160 million in restoration dollars obtained through Superfund settlements in the Clark Fork basin. Matt has sat on Trout Unlimited's National Resource Board for five years, and on the board of Montana Trout Unlimited for ten years. Matt has published several law review articles on various topics in environmental and constitutional law.

Tracy Stone-Manning

Tracy holds an undergraduate degree in Radio/TV/Film from the University of Maryland and a Masters of Science in Environmental Studies from the University of Montana. The successes in her career all stem from her ability to bring disparate people together to work for a common goal. At the Five Valleys Land Trust in Missoula, she grew the then-tiny organization into a community force by launching a campaign to buy Mount Jumbo outside Missoula. At Ecotrust, where she served as the community program director in Astoria, Oregon, she worked with a small community to transform its salmon hatchery into a restoration center run in part by the community's high school. She has doubled the size of the Coalition's staff and budget, and was the driving force behind the decision to remove Milltown Dam. As a consultant, she has helped a range of non-profits assess community impact and programs. She was also the founding editor of Headwaters News.

Criteria Statements

1. Relationship of Expected Costs to Expected Benefits. The ultimate goal of this two-phase project is to place the Clark Fork-Blackfoot river confluence and adjacent lands in public ownership. These criteria statements are based on the assumption that phase 1 is successful in obtaining an option for the state to acquire the lands.

This project will create direct restoration benefits in two basic ways. First, by ensuring permanent public access to the restored rivers and lands, the project will enable the public to enjoy the recreational services associated with the natural resources that the state's restoration plan will provide in the Milltown area. These services include rafting, canoeing, fishing, hiking, birdwatching, and hunting. These are precisely the kinds of services that have been lost as a result of contamination, and that were the subject of the state's NRD lawsuits against ARCO and NorthWestern.

Second, the project will benefit restoration of the Milltown area by providing the state with unfettered access to implement its restoration plan on the NorthWestern lands. This will provide the state with the maximum flexibility to implement restoration as it sees fit, without having to negotiate access or terms of restoration with a private landowner. This will not only save the state time and money, but will also enable the state to implement a plan that maximizes restoration values and does not require compromising with any competing values of a private owner.

2. Cost Effectiveness Two alternatives to the proposed project were considered and rejected. The first alternative is no action. If no attempt were made to get the NorthWestern lands into state ownership, then under the consent decree, NorthWestern would attempt to sell the lands to a private party in order to raise funds to satisfy its \$1.4 million obligation to the state. Based on experience on similar riverfront parcels in the area, a private party would be unlikely to provide public recreational access, and would almost certainly be resistant to a trail system or public river access facilities on its land. Although the public would still have access below the high water marks under the state stream access law, there would be limited hiking, hunting, and birdwatching activities, and no ability to put in or take out watercraft in the area. The level of recreational services reasonably available to the public would be much lower.

A second alternative would be to attempt to negotiate access through some sort of easement rather than obtaining fee title. This approach would almost certainly not be cost effective because (1) the price of easements would likely not be substantially different than fee title, and (2) the transaction would be at least as complex as obtaining fee title – and likely more complex, and (3) the rights obtained would be less. Thus, the benefits obtained through an easement would be lower, and the costs likely higher.

3. Impacts to the Environment and Human Health & Safety: None.

4. Public Support: Attached are letters of support from the Missoula County Board of Commissioners, the Friends of Two Rivers (a Milltown citizens' group), and Montana Trout Unlimited. In addition, the participation of the Milltown Stakeholders Working Group in this project reflects broad public support in the affected area.

5. Public Access: Public access is one of the main goals of this project. See #1, above, as well as the discussions of Existing Condition and Desired Future Condition on pages 9-10.